

Franklin (Migration) [2019] AATA 1626 (1 February 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Daryl Lee Franklin
VISA APPLICANT:	Ms Sao Kak Lo
CASE NUMBER:	1620992
DIBP REFERENCE(S):	BCC2015/1869139
MEMBER:	Simone Burford
DATE:	1 February 2019
PLACE OF DECISION:	Perth
DECISION:	The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Statement made on 01 February 2019 at 8:52am

1. CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse (Provisional – no mutual commitment to shared life as married couple to exclusion of others – no genuine and continuing marriage – evidence of combined finances limited – no joint liabilities – credibility issues – inconsistent evidence – relationship contrived for migration purposes – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5, 65, 359, 375

Migration Regulations 1994 (Cth), r 1.15, Schedule 2, cls 309.211, 309.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 11 November 2016 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant, Ms Sao Kak Lo applied for the visa on 30 June 2015 on the basis of her relationship with her sponsor, Mr Daryl Lee Franklin, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 Partner (Provisional). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211(2) and cl.309.221 because the delegate was not satisfied the visa applicant and sponsor had a mutual commitment to a shared life as a married couple to the exclusion of all others or a relationship that was genuine and continuing. As such the delegate was not satisfied that the parties met the definition of 'spouse' under s.5F of the Act.
5. The review applicant appeared before the Tribunal on 2 May 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant, Ms Sao Kak Lo, via telephone from Macau. The Tribunal hearing was conducted with the assistance of an interpreter in the English and Mandarin languages.
6. The review applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
7. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in the present case is whether the visa applicant is the spouse or de facto partner of the review applicant as defined under the Act.

Whether the parties are in a spouse or de facto relationship

9. Clauses 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an eligible New Zealand citizen.
10. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's

and review applicant's household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

11. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The Department's file contains a copy of a Marriage Certificate issued by the Registrar of Births, Deaths and Marriages on 26 November 2013 certifying the marriage of the review applicant to the visa applicant on 16 November 2013 in Greenwood, Western Australia. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

12. The Tribunal has before it the Department's file relating to the visa applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, which was submitted by the review applicant with the application for review, and other material available to it including material submitted by the review applicant to the Tribunal.
13. The visa applicant and the review applicant both gave evidence at the hearing. The Tribunal questioned them at length about their relationship. The Tribunal took evidence regarding the development of their relationship, their relationship history, knowledge of each other's background and family history, financial, social and household aspects of their relationship and the nature of their commitment to each other.
14. While the Tribunal found the review applicant to be a candid witness the Tribunal has significant concerns regarding the visa applicant's credibility as a witness. The basis for these concerns is outlined further below. These concerns were put to the review applicant and the visa applicant at the hearing and in writing following the hearing in accordance with s.359A of the Act.
15. The Tribunal has considered the parties' oral evidence together with material before it in reaching its findings.

16. *Review background*

17. The visa applicant came to Australia on 4 August 2011 as a visitor and applied for a student visa onshore on 28 September 2011. This was refused. She met Mr Franklin in May 2012 and applied for a partner visa onshore on 19 December 2013. This was refused on the basis that the visa applicant did not meet the requirements of Schedule 3 of the Regulations (as she was not a holder of a permanent visa). The visa applicant sought a review of the decision with the Migration Review Tribunal (as it then was) but the Tribunal decided on 6 March 2015 that it had no jurisdiction to conduct the review as the application had been incorrectly completed. Accordingly, Ms Lo left the country on 29 June 2015 to file an offshore application for a partner visa. That application was filed on 30 June 2015. It is that application which is the subject of this review.

18. *Relationship background*

19. The visa applicant, Ms Lo, is a 51-year-old Chinese national. She was previously married in September 1988 and divorced in October 2004. She has one adult son from that marriage. A translated copy of her divorce papers were provided on the Department's file. The review applicant, Mr Franklin, is 58-year-old eligible New Zealand citizen. The review applicant was

previously married in August 1995 and was divorced in November 2013. A copy of the review applicant's divorce papers were provided on the Department's file. He has two adult sons from that relationship. One of his sons has two children.

20. The parties met in May 2012 at the bar in Northbridge in Perth. They moved in together around six months later. The Tribunal notes that the delegate's decision raised a concern that the parties had described meeting at different locations in Northbridge, one at the Monkey Bar and one at the Northbridge Hotel. However, giving the parties benefit of the doubt, the Tribunal formed the view that this inconsistency was not significant and reflected a confusion on the part of the review applicant as to the name of the bar rather than a fabrication of the location.
21. They married in November 2013 at the review applicant's home in Perth and belatedly honeymooned on the Gold Coast. No members of the visa applicant's family were present at the wedding. The review applicant's sons and their families were present at the wedding. They travelled to Melbourne in November 2014. They applied for a partner visa onshore. This was refused and the visa applicant departed for Macau in June 2015. She was interviewed by Australian border officials on her exit from Australia.
22. She returned to Macau and filed an onshore partner visa application. She was interviewed by the Department in Macau in relation to that application.
23. The parties attempted to meet in New Zealand in May 2016 however the visa applicant was denied entry to New Zealand by authorities. The review applicant visited the visa applicant in Macau and Hong Kong in June 2016 and the parties travelled together to Thailand.
24. *Adverse material*
25. Following the hearing and complying with the obligations under s.359A of the Act, on 17 October 2018, the Tribunal wrote to the review applicant to put to him adverse information contained in the Department's file and arising from the visa applicant's testimony at the hearing, for his comment or response.

The particulars of the information put to the review applicant were:

- The review applicant testified that the visa applicant was not working when they were married and living together in Australia and that the review applicant was financially supporting the visa applicant because she was not working. However, the visa applicant gave evidence that she was continuing to work 'occasionally' as a masseuse while living with you including providing massages with 'happy endings'. The visa applicant indicated she did this while the review applicant was at work and did not tell him.
- While in Australia the visa applicant made over \$100,000 in money transfers to China using a residential address at [detail omitted]. She made transfers using this address until 30 January 2015.
- The review applicant testified that he was not aware of the visa applicant transferring money overseas while they were married and living together. However, the visa applicant testified that she told the review applicant after they got married that she was sending money home to her son in Macau.
- The visa applicant made money transfers to Lei Kok Heong. She indicated this was her brother's wife. The visa applicant told the Tribunal Ms Lei had never travelled to Australia. However, Departmental records indicate Ms Lei was in Australia from 2008 to 2011 and transferred money from Australia to China including to the visa applicant.

- The review applicant testified that he thought the visa applicant had been working in Sydney before they were together. The visa applicant testified that she had never been to Sydney and then changed her testimony to indicate she had visited Sydney once with a friend after the parties were married.
 - The visa applicant told the Tribunal she travelled to Australia alone. At her interview with the Department on 12 September 2016 she indicated she travelled with a friend Wong Hoi Lin.
 - When the visa applicant was interviewed exiting Australia she had three different identification cards in her possession in the names of Lou Xiuge; Lo Chio Seng and Ku Mong He, all with the visa applicant's date of birth. At the Tribunal hearing the visa applicant indicated this was a misunderstanding and they were the identification cards of her mother and father.
 - The visa applicant said she came to Australia to go to a friend's wedding but she could not recall the friend's name or when she got married. She later said she lived with this friend and used her address for setting up a bank account and making money transfers back to China.
 - The visa applicant told the Tribunal that she started working as a masseuse in September 2012 but she later told the Tribunal that it was earlier than that but she could not recall exactly when.
26. The invitation indicated that the Tribunal had not made a decision on this information; however, the relevance of this information, subject to comment or response, is that the information may raise doubts regarding the parties' credibility and the truthfulness of the information provided to the Department and to the Tribunal. This may be taken into account in assessing the genuineness of the relationship. If the Tribunal accepted the information would lead the Tribunal to find that the visa applicant was not in a genuine and continuing relationship with the sponsor, the parties did not have a mutual commitment to a shared life as a married couple to the exclusion of all others, and those circumstances, the visa applicant was not the spouse or de facto partner of the review applicant as her sponsor, as defined by s.5F or s.5CB of the Act. If the Tribunal is not satisfied that the visa applicant is the spouse or de facto partner, as defined under the Act, she would not meet cl.309.211(2) and the Tribunal may conclude that she does not meet the requirements for the grant of the visa for which she has applied. If the Tribunal so finds, this would be the reason or part of the reason for affirming the decision under review.
27. The review applicant was invited to give comments on or respond to the above information in writing by 1 November 2018. On 30 October 2018 the review applicant's registered migration agent emailed the Tribunal indicating that she had attempted to contact the review applicant and his partner in regard to the invitation but they had not responded. No further response to the invitation was received.
28. Following the hearing the Tribunal received copies of documents on the Department's file which were subject to a s.375A certificate. The Tribunal wrote to the review applicant on 11 December 2018 informing him that folios on the Department file were subject to a s.375A certificate. The Tribunal provided the applicant with a copy of the s.375A certificate. The Tribunal explained that the effect of the certificate is that the Tribunal is prohibited from disclosing the document and/or information in it to the review applicant. The Tribunal informed the review applicant that the basis for the certification was that the disclosure of the information would disclose lawful methods for preventing, detecting and investigating breaches or evasions of the law which would be likely to prejudice the effectiveness of those methods. The Tribunal formed the preliminary view that the certificate was valid for the reasons outlined on the certificate and invited submissions on the validity of the certificate. The Tribunal noted the relevant information contained in the identified folios had been put to

the review applicant in the invitation issued by the Tribunal under s.359A on 17 October 2018 (which is detailed above).

29. No submissions were received. On 19 December 2018 the review applicant's registered migration agent emailed the Tribunal indicating that she had contacted the review applicant and the visa applicant regarding the request for submissions but neither of the parties had responded to their representative. The review applicant's agent indicated she would contact the Tribunal if she heard anything from the parties. No further communication was received by the Tribunal.
30. The Tribunal decided the certificate was valid. The Tribunal notes that the relevant information in the folios was covered in the delegate's decision and had been discussed with the review applicant and the visa applicant at the Tribunal hearing. Further specific adverse information contained in the identified folios had been put to the review applicant in the invitation issued by the Tribunal under s.359A on 17 October 2018 (which is detailed above).
31. *Credibility concerns*
32. The review applicant and the visa applicant gave evidence before the Tribunal. The Tribunal is troubled by the visa applicant's testimony. The Tribunal did not find her to be a witness of truth. She repeatedly changed her answers and provided testimony which was inconsistent with prior information provided to the Department and the Tribunal. She only admitted to having provided incorrect or misleading information when inconsistencies were put to her directly by the Tribunal. The Tribunal cautioned the visa applicant to answer questions carefully, as repeatedly inconsistent answers may lead the Tribunal to make adverse findings regarding her credibility. However, the visa applicant continued to provide significantly inconsistent answers despite being cautioned. Examples were detailed in the s.359A letter sent to the review applicant.
33. The Tribunal was also troubled by the visa applicant's lack of transparency in her dealings with her husband. It was clear from the visa applicant's testimony that she'd withheld significant information from the review applicant including during the period when the parties were living together. This is detailed in the s.359A letter sent to the review applicant. The most significant piece of information was that the visa applicant had continued to work as a masseuse while married to the review applicant but had told him that she was not working. She was also transferring money to China during this period and although she claimed to the Tribunal to have told the review applicant about these transfers, the review applicant indicated that he was unaware of these transfers until after the visa applicant was questioned about them on her exit interview in 2015. Given the Tribunal's concerns with the visa applicant's credibility the Tribunal accepts the review applicant's testimony on this issue.
34. Additional concerns regarding inconsistencies were raised in the delegate's decision. These were put to the review applicant and the visa applicant by the Tribunal at the hearing. These concerns included:
 - That the visa applicant transferred over \$100k from Australia to Macau, Hong Kong and China during her stay (on tourist visa). The visa applicant did not declare this income to the review applicant and did not use it to establish joint assets in Australia. She continued to use the Rockingham address as her residential address on money transfers until 30 Jan 2015. That address was linked to a brothel which is known to the Department to employ prostitutes working unlawfully.

In response to this information the visa applicant said that she had merely established a bank account from that address where she initially lived in Perth with her friend who got married and she never change the address for the money transfers. She was unaware

that the address was associated with a brothel. The review applicant indicated he was not aware that the visa applicant was making money transfers or was continuing to work while they were married. He testified he was supporting her financially as she was not working.

- That the visa applicant made money transfers to a person identified as Lei Kok Heong. She told the delegate this was her brother's wife and she had transferred money to her when she had a baby. When asked if Ms Lei had ever travelled to Australia the visa applicant said she had not ever travelled to Australia. However, Departmental records indicate that Ms Lei was in Australia from 2008 to 2011, including unlawfully, and that she sent large amounts of money to China including to the visa applicant.
 - At the hearing the visa applicant said her sister-in-law had not travelled to Australia and she had transferred money to Ms Lei when her mother was sick.
- The visa applicant had a number of male names in her possession at her exit interview from Australia but claimed only one previous relationship.
 - At the hearing the visa applicant submitted that she had met these men through work as a masseuse but when she was with the review applicant she had no contact with them. She reiterated she had only one prior relationship in Australia lasting a few months. She said she could not remember the person's name.
- At her exit interview the visa applicant had identification in her possession in three different names all bearing her birthdate.

The visa applicant indicated at the hearing she thought this was a translation mistake and the other two identification documents were in her parent's names. The Tribunal accepted that the names may have been those of her parents but remained concerned that there was no explanation as to why they all bore the visa applicant's birth date.

- Information on the visa applicant's phone found by border agents at the exit interview indicated that the visa applicant and the review applicant were selling drugs.
 - At the hearing the visa applicant said she did not know what the messages meant. The review applicant indicated he was unaware of the message until much later but he thought the message, which asked "can Darryl get me a 50", probably related to his son who was a "crackhead" at the time and smoked marijuana. He said his son was now clean but that the message which came from a girlfriend of a friend of his might have assumed his son had access to marijuana. The Tribunal accepts the review applicant's explanation and in light of the scant nature of the evidence does not place any weight on this issue.

35. While issues detailed in the delegate's decision were put to the visa applicant and the review applicant for comment at the hearing the Tribunal put several of the significant concerns or inconsistencies to the review applicant again in the s.359A letter. No response or submissions were received from the review applicant or the visa applicant.

36. *Consideration of circumstance of the relationship*

37. In forming an opinion whether the parties are in a spousal relationship consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is attached to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

38. *Financial Aspects*

39. The Tribunal has had regard to the evidence provided relating to the financial aspects of the relationship including joint ownership of real estate and other major assets and joint liabilities, the extent of pooling of financial resources, any legal obligations owed by the other party and any sharing of the day-to-day household expenses.
40. The parties have provided some documentary evidence in relation to their financial circumstances.
41. The visa applicant submitted that she worked in massage parlours in Western Australia from September 2012. This occasionally involved sexual services referred to as 'happy endings'. However, the visa applicant maintained she did not work as a prostitute. She indicated that she transferred money earned home to China, principally to her son and to her mother. The delegate's decision also indicates the visa applicant admitted to having transferred money to her sister-in-law, Ms Lee Kok Hyong, when she had a baby. Before the Tribunal the applicant said that she transferred money to her sister-in-law when her mum was sick.
42. The visa applicant owns a flat in Macau and is sharing this home with her son. The review applicant is living in a friend's home and has liabilities from previous business activities and his divorce. He told the Tribunal the visa applicant has no responsibility for these liabilities. There is no evidence that the parties have any joint ownership of real estate or other major assets or any joint liabilities. There is also no evidence that either of the parties owes any legal obligation in respect of the other. The Tribunal finds the parties do not jointly own real estate or any other major assets and that they have no joint liabilities.
43. The evidence of combining finances and sharing of day-to-day expenses was limited. The review applicant told the Tribunal that he had been paying the bills when the parties were married and living together as the visa applicant was not working. The parties were living in the home of a friend who was a fly-in, fly-out (FIFO) worker and while the utility and other household bills were not in the review applicant's name, part of the agreement was that he was responsible for paying them in exchange for living and looking after the home while the friend was away. The Tribunal accepted the review applicant's testimony in this regard. The review applicant told the Tribunal he gave the visa applicant some money for housekeeping. The Tribunal finds that the review applicant met the parties' day-to-day expenses while they were living together.
44. The parties submitted that they maintained a joint bank account while the visa applicant was in Australia but this ceased when she left. They provided a copy of the Commonwealth bank statement from November 2014 to May 2015. This indicates an opening balance in the account in November 2014 of \$97.73. Other than a small amount of interest there were no transactions on the account before it was closed in May 2015. Another Commonwealth bank document submitted on the application indicated that another joint account was opened on 13 May 2015. No statements from this account were provided. The review applicant told the Tribunal he was not sure why the joint accounts had been opened. It was easier to use his account given he was the only one who is working.
45. The Tribunal finds that there was no joint financial purpose in opening a joint account, since these were not used by the parties. The Tribunal has formed the view that the account was opened for the purpose of presenting evidence in support of the visa application.
46. The review applicant submitted that he provided transfers of monetary support to the visa applicant when she returned to Macau to assist with expenses. Receipts or records for nine transfers, between HKD745 and HKD2,086, from February, April, June and August 2016 were provided. Other than in this initial setup period on the visa applicant's return to Macau,

the review applicant told the Tribunal that the visa applicant was working in Macau and was meeting her own expenses there. The Tribunal finds that the review applicant and visa applicant are not sharing day-to-day expenses while living in separate countries.

47. As noted above, the review applicant was unaware the visa applicant transferred large sums of money to China including during the period the parties were married and living together. He was also unaware that the visa applicant was continuing to work while the parties were married and living together in Australia and believed he was supporting her financially, as she was not working and was taking care of the home. The Tribunal finds the parties were not pooling their financial resources at the time the application was made or at the time of this decision.
48. The Tribunal finds the lack of transparency and deception on the part of the visa applicant with regard to her income and employment is not consistent with a genuine married relationship.
49. On the basis of the evidence available the Tribunal finds that the parties' financial arrangements are not such that would indicate a genuine and continuing married relationship at the time of application and at the time of decision.

50. *Nature of the household*

51. The Tribunal has had regard to the evidence as to the nature of the household including the parties' living arrangements and any sharing of housework.
52. The parties claimed to be living together in Australia for about two years prior to the visa applicant returning to Macau. They resided at an address in Greenwood, Western Australia which is owned by a friend of the review applicant. The owner, Mr Stephen Ross Williams, works in FIFO employment and stays in the home when in Perth. The owner meets the costs of the home including the mortgage and the review applicant meets utility bills and pays \$100 a week in rent. The review applicant told the Tribunal that while they were living together in Australia the visa applicant undertook the majority of the housework and cooking, as the review applicant was working and the visa applicant was not. The visa applicant told the Tribunal that she was working but was also looking after the home and was only working in hours when the review applicant was not in the house. The Tribunal finds that the visa applicant was primarily responsible for housework when the couple was living together. The Tribunal also finds that this household arrangement reflected the fact that the review applicant believed the visa applicant was not working outside the home at that time.
53. Mr Williams provided a statutory declaration to the Department dated 16 June 2015 confirming the parties lived at his address and attesting to his belief that the marriage was genuine.
54. Ms Lo provided copies of correspondence addressed to her at this address. The Tribunal notes that the delegate's decision raised a concern that Ms Lo was continuing to use an address in Rockingham in relation to money transfers to China during the period she claimed to be living in Greenwood. This concern was put to the visa applicant at the hearing and she indicated that that was the address of her friend and she had asked her friend to open an account for her at that address and she didn't cancel the account when she was living with her husband; she wasn't aware that account needed to be closed. She said she was living at that address when she came to Perth and she used it to wire money. She wasn't aware the address was actually used when she was transferring money, so when she was living with her husband, when she did money transfers, everything stayed the same. When asked about concerns raised in the delegate's decision that that address in Rockingham was associated with being a brothel, which was known to the Department to employ prostitutes

working unlawfully, the visa applicant said she had no idea when she first arrived what was going on and after she left the address she never went back.

55. Given the Tribunal has found that the visa applicant did not disclose her ongoing work or financial transactions to the review applicant, the Tribunal finds that her claim to have used the Rockingham address inadvertently while married to the review applicant lacks credibility. This also casts doubt on her claim not to have known the location was associated with a brothel and further undermines the visa applicant's credibility as a witness.
56. The couple had no children together. Their children are all adults. The visa applicant gave evidence that she transferred money to her son in China. There is no evidence the parties were caring for or supporting the review applicant's adult children. The Tribunal finds on the evidence there was no joint responsibility for the care and support of children.
57. Having regard to all the evidence, the Tribunal finds that the visa applicant and the review applicant lived together in the Greenwood address for a period of around two years prior to the visa applicant returning to Macau. The Tribunal has found that the visa applicant was primarily responsible for the housework as the review applicant was working and he believed the visa applicant was not. However, given concerns regarding information about her work and financial arrangements which were not shared by the visa applicant with the review applicant, the nature of the parties' household is not such as would indicate a genuine married relationship at the time of application and at the time of decision.

58. *Social aspects of the relationship*

59. The Tribunal has had regard to the evidence provided as to whether the parties represent themselves to others as being married to each other, the opinion of the parties' friends and acquaintances about the nature of the relationship and any basis on which the parties plan and undertake joint social activities.
60. The parties provided supporting statements from friends including Mr Williams, Vivian Nathan (8 June 2015), Peter Woodward (26 June 2015), Jeffrey Hitchens (18 June 2015) and Ching Mortimer (5 June 2016). The statements indicate the belief that the relationship is genuine. As noted above Mr Williams' statement supports the parties' claim to have lived together in the Greenwood address. Ms Nathan's statutory declaration indicates that she met the visa applicant when she started dating the review applicant and attests to their having lived together. Ms Nathan indicates that she spent time with the couple on a regular basis and attended their wedding. She attested to her belief that the relationship is genuine. Mr Woodward indicates he previously lived with the review applicant and met the visa applicant when they began dating. He attended their wedding and attests to having seen them several times a week. He attested to his belief that the relationship is genuine. Mr Hitchens attended the parties' wedding and attests to having seen the couple on an almost daily basis. He attests to his belief that the relationship is genuine. Ms Mortimer is a friend of the visa applicant who attests to her belief that the relationship is genuine. The Tribunal finds the third party statements support the parties' claim to have been in a relationship and the Tribunal places weight on the statements in this regard.
61. However, the Tribunal notes that these statements all dated from 2015 following the visa applicant's departure for Macau. No third party statements supporting the current status of the relationship were provided.
62. The parties had a wedding at their address in Greenwood, with about 40 to 50 guests attending. Photographs were provided of this event, which are consistent with this evidence. A number of the supporting statements evidence attendance at the wedding.

63. The parties claim to speak regularly and provided copies of text messages from January to April 2016 and phone records for the visa applicant for September and October 2015. Text messages were also provided for the period from June to August 2017.
64. The parties provided evidence of joint travel in Australia and overseas, consistent with oral testimony. This included travel to Melbourne for a friend's wedding. They provided photographs, principally of the two together on several occasions with other individuals. Some of those photographs appear to have been taken during travel. The review applicant states he has visited the visa applicant once or twice a year since she left Australia. The Tribunal accepts they have maintained contact while the visa applicant has been overseas.
65. The Tribunal accepts that the relationship was known to others and that the parties' families were aware of the relationship. The Tribunal also accepts that the couple undertook joint social activities, travelled together and represented themselves to others as being in a relationship.
66. Considering all the information provided to the Tribunal there is some evidence that the parties represented themselves to other people as being married to each other and were regarded by friends and family to be in a married relationship around the time the application was made and was being considered by the delegate.. The Tribunal gives this evidence weight in considering the genuineness of the relationship at the time of application.

67. *Nature of commitment*

68. The Tribunal had regard to evidence provided in relation to the nature of the parties' commitment to one another including the duration of the relationship, the length of time they have lived together, the degree of companionship and emotional support they draw from each other, and whether they see the relationship as long-term.
69. The Tribunal accepts on the evidence that the parties met in May 2012 and lived together for a period of two years in Australia prior to the visa applicant departing in mid-2015. The Tribunal recognises the length of the relationship.
70. When asked about their future plans the review applicant indicated that the visa applicant was thinking about selling her home in China and the parties' planned to buy a house in Australia and maybe travel in a caravan. They may also retire to New Zealand. The visa applicant said that they were getting old and that they wanted to accompany each other for the rest of their lives.
71. As noted above, the delegate's decision raised a concern that at her exit interview the review applicant had a number of male names in her possession from Australia and that she initially said she didn't know who they were, and then had indicated that these were men that she had met through the massage parlour and that one was person with whom she had a previous relationship. When this information was put to the this visa applicant at the hearing she stated that she had been living together with her husband since they started the relationship and she did not contact those people any more. The review applicant said that he didn't know anything about the numbers but that as far as he was concerned the relationship was exclusive.
72. On the basis of the evidence before it, the Tribunal accepts that the parties were in an exclusive relationship. However, as noted above the visa applicant was continuing to engage in activities during the relationship that were concealed from the review applicant and included work at the massage parlour, where she had obtained contact details for other men. The Tribunal notes that the review applicant maintained that discovering (at the hearing) that

these activities had been withheld from him did not undermine his confidence that the applicant was committed to the relationship.

73. The review applicant gave evidence that the parties get on well and provide companionship to one another, speaking every day. They made each other laugh and friends assured him that the visa applicant loved him. The visa applicant indicated that they loved each other and were getting old and wanted to be together. The Tribunal accepts that the parties provide a degree of companionship to one another. There was little evidence that they provide emotional support to one another to any notable degree. The Tribunal finds that the parties provide companionship to one another and places some weight on this.
74. The Tribunal accepts that the review applicant may have had hopes that the relationship was one of mutual commitment, but the Tribunal is not satisfied on the evidence that this commitment was mutual. As noted above the Tribunal did not find the visa applicant to be a truthful witness. Having regard to all the circumstances of the application the Tribunal finds that the visa applicant does not have a mutual commitment to a shared life with the sponsor as a married couple and does not view the relationship as long-term.
75. The Tribunal has serious concerns about the applicant's commitment to the relationship and finds the nature of the parties' commitment is not consistent with a genuine married relationship. Further, the Tribunal notes that the parties have not responded to invitations to make submissions on matters concerning the Tribunal since the hearing was concluded. This leads the Tribunal to have concerns regarding the mutual commitment of the parties to the relationship at the time of decision.

76. *Conclusions*

77. The Tribunal has carefully considered all the circumstances of the relationship. The Tribunal has found that some circumstances of the relationship are consistent with a married relationship. This includes that the parties have lived together for a significant period of time, have made arrangements for the review applicant to meet day-to-day expenses of the household when they are living together and for the visa applicant to be primarily responsible for housework during that period. The Tribunal has also found that the parties have represented themselves socially to be in a married relationship. However, the Tribunal has found other circumstances which are not consistent with a married relationship. The visa applicant's failure to disclose significant aspects of her life including work and financial arrangements during the marriage to the review applicant, combined with her repeatedly inconsistent answers to questions, led the Tribunal to find she was not a witness of truth and cast doubt on the genuineness of her commitment to the relationship. Further, the lack of transparency regarding the circumstances of the relationship is not consistent with a genuine married relationship. The Tribunal finds that the visa applicant contrived to enter the relationship to enable her to remain in Australia to continue to work and transfer money to China, unbeknown to the review applicant, her sponsor, and to secure permanent resident status.
78. Considering all the circumstances of the relationship and based on the findings outlined above, and based on the evidence before it the Tribunal is not satisfied that at the time of the application and at the time of the decision the parties have a mutual commitment to a shared life as a married couple to the exclusion of all others. The Tribunal is not satisfied on the evidence that the parties are in a genuine and continuing relationship at the time of application and at the time of decision. Further the Tribunal is not satisfied on the evidence that the visa applicant and review applicant live together or not separately and apart on a permanent basis at the time of application and at the time of decision.

79. Having regard to the totality of the evidence before it, and on the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made and the time of this decision.
80. Clause 309.211(3) provides at the time of application the visa applicant intends to validly marry a person who is an Australian citizen, Australian permanent resident or an eligible New Zealand citizen. The Tribunal notes its finding above that the parties are validly married. There is no evidence, and the parties did not submit, that the visa applicant intends to validly marry according to the requirements of cl.309.211(3). Therefore, the visa applicant does not meet cl.309.211(3).
81. Therefore the visa applicant does not meet cl.309.211 and cl.309.221.
- 82.
83. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

84. The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Simone Burford
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).